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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,742	10/17/2003	Yixin Diao	YOR920030504US1	2816
<div>7590 Ryan, Mason &amp; Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560</div>			<div>EXAMINER ZHE, MENG YAO</div>	
			<div>ART UNIT 2195</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 12/11/2007</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/688,742	Applicant(s) DIAO ET AL.	
	Examiner MengYao Zhe	Art Unit 2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-28 are presented for examination.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- A. The following claim languages are unclear and indefinite:

- i) Claim 1, line 4, it is uncertain what is meant by "a generic format"  
<i.e. what is it? Is it a format that may be used by any computer system in the world?>

Line 5, it is unclear what is meant by "generically controlled" <i.e. how is generically controlled different from just controlling resources?>

Claims 17, 27 and 28 have the same deficiencies as claim 1 above.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-9, 12-13, 15-22, 24, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott et al., Patent No. 6,314,463 (hereafter Abbott) in view of Williams et al., Patent No. 5,845,283 (hereafter Williams).

6. As per claims 1, 17, 27, 28, Abbott teaches a method of generically controlling one or more resources associated with at least one computing system, comprising the steps of:

evaluating one or more generically-expressed performance metrics associated with the one or more resources given one or more generically-expressed configurations of the one or more resources (Abstract, lines 1-6; Column 6, lines 66-Column 7, line 5; Column 11, lines 13-20, lines 45-60);

causing a change in the one or more generically-expressed configurations of the one or more resources based on the performance metric evaluating step (Column 14, lines 49-54; Column 7, lines 39-64);

updating the one or more resources with the one or more resource specific configurations (Column 17, lines 50-54).

Abbott does not specifically teach translating one or more performance metrics and one or more configurations from an associated resource specific format to a generic format such that each of the one or more resources are generically controlled and translating the one or more changed configurations from the generic format to the associated resource specific format.

However Williams teaches a conversion engine that can translate one or more performance metrics and one or more configurations from an associated resource specific format to a generic format such that each of the one or more resources are generically controlled and translate the one or more changed configurations from the generic format to the associated resource specific format for the purpose of communication among systems that each uses a different communication format (Abstract; Column 2, lines 17-19, lines 45-53; Column 8, lines 32-36).

It would have been obvious for one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Abbott, where resource managers and resources have the ability to communicate amongst one another and resources managers have the ability to make performance optimization and configuration decisions based on metrics sent to it from the resources themselves, with in the specific instance where the resources and the manager each uses a different communication protocol or format, a conversion engine may be used to translate one or more

performance metrics and one or more configurations from an associated resource specific format to a generic format such that each of the one or more resources are generically controlled and translating the one or more changed configurations from the generic format to the associated resource specific format, as taught by Williams, because it allows communication among systems that each uses a different communication format.

7. As per claims 2, 18, Abbott teaches wherein the one or more resources are at least one of real resources and virtual resources (Abstract, lines 1-3).

8. As per claims 3, 19, Abbott teaches wherein the step of evaluating the one or more generically-expressed performance metrics further comprises determining whether one or more performance goals are being met based on the one or more generically-expressed performance metrics (Column 3, lines 4-10; Column 17, lines 65-67).

9. As per claims 4, 20, Abbott teaches the step of obtaining the one or more generically-expressed performance metrics from a probe (Column 11, lines 45-47).

10. As per claim 5, Abbott teaches wherein the probe measures performance of the one or more resources in the context of a particular workload (Column 11, lines 46-54).

11. As per claim 6, Abbott teaches wherein the particular workload is a current workload (Column 11, lines 46-50).

12. As per claims 7, 21, Abbott in view of Williams does not specifically teach the step of obtaining the one or more generically-expressed performance metrics via one or more measurements of at least a part of an end user performance experience.

However, it would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to have a user give feedback and forming part of the performance metric because to maintain quality of service (QoS), user feedback is important.

13. As per claims 8, 22, Abbott teaches further comprising the step of obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration (Column 17, lines 22-27, lines 50-54).

14. As per claim 9, Abbott teaches the step of categorizing the one or more obtained, generically-expressed configurations (Tables 1-2 in columns 11-12).

15. As per claim 12, Abbott teaches wherein the model building step further comprises obtaining performance samples associated with the one or more resources and their one or more current configurations (Column 11, lines 13-17, 46-55).

16. As per claims 13, 24, Abbott teaches wherein the step of causing a change in the one or more generically-expressed configurations further comprises instructing the one or more resources to change one or more configurations associated therewith (Column 17, lines 50-54).

17. As per claims 15, 26, Williams teaches wherein the one or more performance metrics and the one or more configurations are expressed in generic formats in accordance with one or more common generic interfaces (Column 6, lines 1-6).

18. As per claim 16, Williams teaches wherein a common generic interface comprises a Common Interface Model (Column 6, lines 1-6).



19. Claims 10, 11, 14, 23, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott et al., Patent No. 6,314,463 (hereafter Abbott) in view of Williams et al., Patent No. 5,845,283 (hereafter Williams) further in view of Freund, Patent No. 6,076,174 (hereafter Freund).

20. Freund was cited in the last office action.

21. As per claims 10, 23, Abbott in view of Williams does not specifically teach wherein the step of causing a change in the one or more generically-expressed configurations further comprises building a model for use in determining changes in the one or more generically-expressed configurations.

However, Freund teaches wherein the step of causing a change in the one or more generically-expressed configurations further comprises building a model for use in determining changes in the one or more generically-expressed configurations for the purpose of helping to better determine and fine tune resource allocation schedules (Column 3, lines 38-48; Column 4, lines 1-7).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Abbott in view of Williams with the step of causing a change in the one or more generically-expressed configurations further comprises building a model for use in determining changes in the one or more

generically-expressed configurations, as taught by Freund, because it helps to better determine and fine tune resource allocation schedules.

22. As per claim 11, Freund teaches wherein the model building step comprises using at least one of a previous performance history and a previous configuration (Column 3, lines 22-33; Column 4, lines 8-15; Column 5, lines 20-26).

23. As per claims 14, 25, Freund teaches the step of storing the one or more changed, generically-expressed configurations (Column 3, lines 7-9, lines 21-28).

### ***Response to Arguments***

24. Applicant's argument filed on 9/24/2007 regarding to claims 1-28 have been fully considered, but they are moot in view of the new ground of rejection.

### ***Conclusion***


25. Applicants' amendments necessitated the new grounds of rejection presented in this office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MengYao Zhe whose telephone number is 571-272-6946. The examiner can normally be reached on Monday Through Friday, 10:00 - 8:00 EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached at 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
**MENG-AL T. AN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER**